

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

RICHARD BAKER

PLAINTIFF

VS.

CIVIL ACTION NO. 3:18cv410-FKB

TERRY GANN, et al.

DEFENDANTS

ORDER

Richard Baker filed this action pursuant to 42 U.S.C. § 1983 while he was a detainee at the Yazoo County Regional Correctional Facility (YCRCF). Presently before the Court is the motion [41] of Defendants Mary Cotton, Dustin Wadford, and Christopher Dean pursuant to Fed. R. Civ. P. 12(b)(5) to dismiss for insufficiency of service of process or, in the alternative, to quash service. Plaintiff has not responded to the motion. The Court concludes that service should be quashed and that process should be re-issued for these defendants.

The docket sheet reflects that the United States Marshal attempted service on these defendants on December 13, 2019. See [38], [39], and [40]. The proof of service indicates that the summons forms were left with Patty Fletcher at YCRCF. However, in their motion, movants state that Ms. Fletcher, an accounts payable and inventory clerk at the facility, was not authorized to accept service for them. Attached to their motion is the affidavit of Ms. Fletcher, confirming her lack of authority.

Where service is insufficient but curable, a court should generally quash the service, rather than dismiss, and give the defendant another opportunity for service.

Bradley v. City of Hattiesburg Police Dep't, No. 2:12CV206-HSO-RHW, 2014 WL 1050411, at *3 (S.D. Miss. Mar. 17, 2014) (citing *Albo v. Suzuki Motor Corp.*, Civ. No.

308–0139–KC, 2008 WL 2783508, *1 (W.D.Tex. July 2, 2008). This approach is particularly appropriate in the present case, as Plaintiff, who is proceeding *in forma pauperis*, had no control over the manner of service.

According, it is hereby ordered that service on Defendants Cotton, Wadford, and Dean is quashed. The Clerk is directed to re-issue a summons for each of these defendants and to forward same to the United States Marshal for service.

So ordered, this the 21st day of September, 2020.

s/ F. Keith Ball
United States Magistrate Judge